IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 332 of 2001
(Old No. 1197 of 1986)

Jai Datt
S/o Hirdayram
R/o Village Nilauti,
Patwari Circle Bhumari, Tehsil Champawat,
District Pithoragarh (Now Distt. Champawat).
…….. Appellant

Versus

The State …… Respondent

Mr. B.S. Adhikari, learned counsel for the appellant.
Mr. Rajeev Mohan Birkhani and Mr. P.S. Saun, Brief Holders for State.

Hon'ble Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 15.04.1986, passed in Sessions Trial No. 12 of 1985, by learned Sessions Judge, Pithoragarh, whereby appellant Jai Datt has been convicted under Section 324 and 307 of the Indian Penal Code, 1860 (for brevity hereinafter referred as I.P.C.). The appellant has been sentenced to rigorous imprisonment for a period of two years under 324 of I.P.C., and rigorous imprisonment for a period of seven years and to pay fine of Rs. 500/-, under Section 307 of I.P.C. Appellant Jai Datt is also directed to undergo rigorous imprisonment for a further period of six months, in default of payment of fine awarded. Both the sentences are directed by the trial court to run concurrently.

2) This appeal was filed before the Allahabad High Court in the year 1986, from where it has been received by transfer to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal. The notices were sent to the appellant by this Court and the service on the appellant was sufficient. However, when even after service, no one turned up on behalf of the appellant, bailable warrants were directed to be issued on 04.05.2006, by another Bench of this Court. Thereafter, Mr B.S. Adhikari, Advocate filed Vakalatnama on behalf of the appellant and moved an application No. 936 of 2006 and got recalled the order directing to issue warrants, against the appellant. Since, it was an old appeal, it appears that the Court directed the counsel to argue the case. On 15.06.2006, Hon'ble Mr. Justice J.C.S. Rawat, before whom this appeal was listed, after hearing the parties, passed following order:

> *"An application bearing No. 936 of 2006 has been filed by Sri B.S. Adhikari, learned counsel for the appellant with the prayer to recall the non-bailable warrant dated 04.05.2006.*
>
> *Perused the warrant recall application. There is sufficient ground shown in the affidavit. Therefore, the non-bailable warrant order dated 04.05.2006 is recalled.*
>
> *Sri B.S. Adhikari, learned counsel for the appellant has undertaken that he will argue the case in the next week.*
>
> *List this case on 20.06.2006 in Part –III of the cause list. However, the appellant shall present before this Court on the date fixed.*

The Office is directed to prepare the paper book within a period of three days from today and the same shall be supplied to the parties within a period of four days on payment of usual charges. Learned counsel for the appellant will deposit the charges for the paper book within one day.

If the learned counsel for the appellant makes any default, the warrant recall order shall stand vacated."

Dated: 15.06.2006 *Sd/-*

3) In compliance of aforesaid order paper book was prepared. However, when the case was listed on 11.10.2006, Mr. B.S. Adhikari, learned counsel for the appellant got the final hearing, adjourned. Today, when the case was again listed for final hearing, Mr. B.S. Adhikari, learned counsel for the appellant appeared and stated '*I have no instructions*'. In a 21 year old appeal, in the background of the order dated 15.06.2006, this Court has no option but to hear the State counsel and to peruse the entire lower court record to decide his appeal, on merits. Had it been a case that the counsel was not engaged by the appellant, this Court would have preferred to appoint some Amicus Curiae. But, that option is also not left open. In the circumstances, this appeal is being decided on merits, after going through the entire lower court record, in the light of the grounds of appeal.

4) Prosecution story, in brief, is that in the intervening night of 29th & 30th of March, 1983, Holi festival was being celebrated in front of house of Ishwari Datt, Pradhan of

Village Nilauti, patti Bhumari, District Pithoragarh (now district Champawat). P.W. 3 Bhairav Dutt, informant, has also gone there. When he returned back to his house along with P.W. 4 Ramesh Chandra Bhatt, appellant Jai Datt obstructed their way and started giving blows with a knife on the head of P.W. 3 Bhairav Datt. Other co-accused Bishanu Datt and Krishnanand (both acquitted by the trial court) were also accompanying the appellant. When P.W. 3 Bhairav Datt, raised alarm, his father P.W. 1 Chintamani, who was sleeping inside the house, came out and tried to intervene. On this, appellant Jai Datt stabbed him in the abdomen. Injured Chantamani (P.W. 1) raised shrieks, on which other villagers also came there. P.W. 3 Bhairav Datt, rushed to inform the Patwari, about the incident, who was not present in the headquarters. (In Uttaranchal hills, in certain areas, revenue officials are given police powers.). Meanwhile, since, blood was oozing out of the injury and also a part of the intestines had come out of the stomach of Chintamnai, he was immediately rushed to Primary Health Center, Lohaghat. P.W. 5 Dr. A.B. Patni, examined the injures on the person of Chantamani, at about 5:30 A.M., on 30.03.1983, and found following injury:

(i) ***Incised wound 3 cm X 2 cm, abdomen cavity deep, on the left side of abdomen, large intestine had come out of the wound along with omentum. Faecal matter was also coming out of this incision.***

The aforesaid Medical Officer, P.W. 5 Dr. A.B. Patni, prepared injury report (Ext. A –3). He, considering the

serious condition of the patient, referred him to District Hospital, Pithoragarh. The same Medical Officer, at about 6:15 A.M., on the same day, also examined injuries on the person of Bhairav Datt (PW. 3), which were recorded in Ext. A –4, as under:

(i) ***Incised wound 2.05 cm X 0.5 cm X scalp deep on the left side of forehead 4 cm above from the left eyebrow.***

(ii) ***Incised wound 4 cm X 0.5 cm, scalp deep on the left side of head 10 cm above left ear.***

The Medical Officer opined that the injuries were caused by some sharp edged weapon.

5) P.W. 3 Bhairav Datt lodged the First Information Report (Ext. A –1) with police station Lohaghat, as Patwari was not available at the headquarters. Head Constable Bishan Singh prepared the check report (Ext. A –9), and made necessary entries in the general diary, copy of which is Ext. A –10. Thereafter, the regular police sent back papers to the revenue official, as the matter related to their jurisdiction. The Investigating Officer inspected the place of incident and prepared site plan (Ext. A –6). He took blood stained clothes in his possession, prepared memo (Ext. A –2), interrogated the witnesses and submitted the charge sheet (A –8), against the appellant Jai Datt and other co-accused Bishanu Datt and Krishnanand relating to offences punishable under Section 307 / 109 of I.P.C., for allegedly attempting to commit murder of Bhairav Datt and Chintamnai.

6) It appears that the Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused persons, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions, for trial. The learned Sessions Judge after hearing the prosecution and the defence, framed charge of offences punishable under Section 307 of I.P.C., against accused / appellant Jai Datt for allegedly attempting to commit murder of P.W. 3 Bhairav Datt and that of P.W. 1 Chintamnai. The trial court also framed charge of offences punishable under Section 307 read with Section 34, against co-accused Bishanu Datt and Krishnanand. All the accused pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Chintamani (injured eyewitness); P.W. 2 Tulsi Prasad (eyewitness), P.W. 3 Bhairav Datt (informant and injured eyewitness), P.W. 4 Ramesh Chandra (eyewitness); P.W. 5 Dr. A.B. Patni (who examined the injured witnesses) and P.W. 6 Kanoongo Madan Singh (Investigating Officer).

7) The oral and documentary evidence was put to the accused persons under Section 313 of Cr.P.C., in reply to which all the accused, including the appellant, alleged that they have been falsely implicated in the crime due to enmity. (No evidence was adduced in defence). After hearing the parties, the trial court found Bishanu Datt and Krishnanad not guilty of offences charged against them, but found accused / appellant Jai Datt guilty of offence punishable under Section 324 of I.P.C., relating to injuries caused on the person of Bhairav Datt (P.W. 3) and that of offence punishable under Section 307 of I.P.C., relating to the injuries caused on the person of Chintamani (P.W. 1). After

hearing on sentence, the trial court sentence accused / appellant Jai Datt to rigorous imprisonment for two years under Section 324 of I.P.C. and rigorous imprisonment for period of seven years and to pay fine of Rs. 500/-, under Section 307 of I.P.C. Aggrieved by said judgment and order dated 15.04.1986, this appeal was preferred by the convict Jai Datt.

8) P.W. 1 Chintamani, one of the injured eyewitnesses, has stated that on the day of incident, in the night, he heard shouts of his son Bhairav Datt (another injured) and Ramesh Chandra, and came out of his house. The witness has further stated that he tried to intervene in the quarrel between his son and the accused and his associates, on which, accused / appellant Jai Datt gave a knife blow in his abdomen, as a result of which his intestines came out and he fell unconscious. The statement of this witness is corroborated by statement of another injured eyewitness P.W. Bhairav Datt, who was being given knife blow by accused/ appellant Jai Datt and his associates. The statement of these two witnesses is natural and their evidence is trustworthy. The evidence of both these witnesses is also corroborated by the medical evidence, mentioned above. No only this, P.W. 2 Tulsi Prasad and P.W. 4 Ramesh Chandra, who are the eyewitnesses of the incident, have also corroborated the statement of the aforementioned injured witnesses. There is no reason to disbelieve the statement of the injured eyewitnesses and the other eyewitnesses, who have corroborated the prosecution story.

9)

From the evidence on record, it appears that the defence suggested to the witnesses that the injury caused on the person of Chintamani was due to falling on a pointed stone. However, P.W. 5 Dr. A.B. Patni, has stated that the nature of injury caused on the person of Chintamani could not have been caused by pointed stone, rather, it could have come only from a pointed sharp edged weapon, like a knife.

10) In the grounds of appeal, it is alleged that the enmity between the parties, is the reason for implicating the appellant falsely. However, no one would cause himself the injuries for falsely implicating their enemy. In the grounds of appeal, it is also alleged that there are contradictions in the statements of witnesses but no material contradiction is found by this Court, on examination of the oral evidence. In the grounds of appeal, it is also alleged that the witnesses are not independent eyewitnesses of the incident, as narrated in the prosecution story. Had it been an incident of day time and at a public place, this Court could have considered it proper to ask the Public Prosecutor, why public witnesses are not examined. But, there is no such circumstance, in the present case. Similarly, non-examination of blood stained clothes from Chemical Examiner, is not fatal to the prosecution case, as there is eyewitness account given directly by the eyewitnesses, including by the injured witnesses of the incident.

11) In the circumstances, this Court finds little force in this appeal. The appeal as to the conviction of the appellant Jai Datt under Section 324 of I.P.C., regarding voluntarily causing hurt by a deadly weapon on the person of Bhairav Datt, relating to the offence punishable under Section 307 of

I.P.C., regarding commission of attempting to commit murder of Chintamani (P.W. 1). However, on the point of sentence, this Court is of the view,, that sentence of rigorous imprisonment for five years and a fine of Rs. 500/-, would have met ends of justice, relating to offence punishable under Section 307 of I.P.C. Therefore, the appeal is dismissed on the point of conviction, but on the point of sentence, appeal is partly allowed. The conviction and sentence under Section 324 of I.P.C., against accused / appellant Jai Datt, is maintained. However, the conviction, though, maintained under Section 307 of I.P.C., the sentence under that Section is reduced to five years (instead of seven years) and a fine of Rs. 500/-, in default of payment of which, the convict shall undergo rigorous imprisonment for further period of six months. Both these sentences shall run concurrently. Accused / appellant Jai Datt is on bail. His bail is cancelled. The trial court shall take him into custody forthwith, to make him serve out the sentence, awarded against him.

(Prafulla C. Pant, J.)

Dt. October 26, 2006.
H.Negi